



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

[REDACTED]

[REDACTED]

MPA/146824

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 12, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly denied the PA request for the Petitioner for foot orthotics.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

[REDACTED]

[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Pamela Hoffman

Division of Health Care Access and Accountability

1 West Wilson Street, Room 272

P.O. Box 309

Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.

2. Petitioner's diagnoses include acquired ankle foot deformity, pain in limb, painful pes cavus feet, valgus feet, pronated feet, involuntary movement in legs, feet and toes, and painful leg moving toes syndrome.
3. On December 13, 2012, a PA request was submitted by Hanger Prosthetics on behalf of the Petitioner for custom foot orthoses at a cost of \$570.
4. On December 20, 2012, the agency denied the Petitioner's PA request.
5. On January 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Division of Health Care Access and Accountability denied the petitioner's request for foot orthotics. Section DHS 107.24(4)(f) of the Wisconsin Administrative Code states:

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

Medical assistance regulations specifically prohibit coverage of foot orthoses for "[f]lattened arches, regardless of the underlying pathology." Wis. Adm. Code, § DHS 107.24(5)(a)1.

The Petitioner testified that she currently suffers primarily from painful leg moving toes syndrome. This is a condition in which the foot/toes move involuntarily and cause significant pain. The Petitioner's diagnoses also include acquired foot/ankle deformity and other conditions related to flattened arches. The Petitioner has used inserts previously but they have worn out.

With regard to the request for inserts/foot orthotics, the evidence does not indicate how orthotics will resolve or assist with the painful leg moving toes syndrome. The evidence also does not document specifically the condition related to the diagnosis of acquired foot ankle deformity and how orthotics will relieve that condition. The Petitioner's physician, in a written statement dated January 3, 2013, states that the orthoses are needed for continued support to both feet due to cavus foot structure and mild pronation with stance. The MA rules clearly state that where the underlying condition is flattened feet or arches and the request itself does not document any of the conditions listed in Wis. Adm. Code, § DHS 107.24(5)(a)1, MA does not cover orthotics. The burden of proving medical necessity in accordance with the definition in the MA rules is on the Petitioner and her provider. I recognize that the Petitioner's conditions are painful. However, there is no evidence to support that there is a gross foot deformity or other condition required for the orthoses to be covered by MA.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for orthotics.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

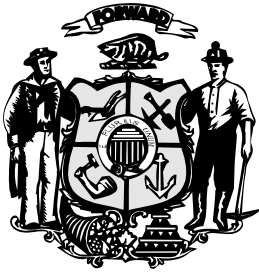
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of April, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 1, 2013.

Division of Health Care Access And Accountability